

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Case No. 04-45272 RJK  
Chapter 13

Jeremy Jon Whitcomb,

Debtor.

***OBJECTION TO CONFIRMATION***

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TO: Debtor, Jeremy Jon Whitcomb; Attorney for Debtor, Malin D. Greenberg;  
Jasmine Z. Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.

1. General Motors Acceptance Corporation, ("GMAC") a secured creditor of Debtor, by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor.

2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and GMAC requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.

3. Hearing on confirmation of the Plan is scheduled for 10:30 a.m. on November 18, 2004, before the Honorable Robert J. Kressel, in Courtroom 8 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.

4. The petition commencing this Chapter 13 case was filed on September 20, 2004 and the case is now pending in this Court.

5. GMAC holds a valid, perfected interest in a 2000 Chevrolet Blazer, VIN 1GNDDT13W5Y2293688, (the "Vehicle"). The value of the Vehicle is \$12,621.67.

6. Copies of GMAC's agreement with Debtor (the "Contract") and evidence of perfection of GMAC's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.

7. The balance due to GMAC as of the petition date totals \$15,218.89 together with interest accruing at the contract rate of 10.99%. The fair market value of the Vehicle is \$12,621.67. Accordingly, the claim of GMAC should be treated as secured to the extent of \$12,621.67.

8. The Plan, however, provides for (i) GMAC's secured claim of \$15,000.00; (ii) total payment on GMAC's secured claim of \$8,500.00; and (iii) monthly payments of \$200.00 commencing in month 1 for 7 months and monthly payments of \$450.00 commencing in month 8 until paid.

9. Using the contract rate of interest, the Plan fails to satisfy GMAC's secured claim plus interest utilizing the payments set forth by Debtor.

10. The Plan does not comply with the provisions of Chapter 13.

11. The Plan does not provide GMAC with adequate protection of its interest in the vehicle.

12. Movant gives notice that it may, if necessary, call J. Wood or another representative of GMAC to testify at the hearing.

13. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, GMAC respectfully requests this Court to enter an order denying confirmation of the Debtor's proposed plan and such other further relief as is just and equitable.

Dated: October 6, 2004\_\_\_\_

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn  
Marilyn J. Washburn (#0324140)  
7700 Bonhomme, 7th Floor  
St. Louis, MO 63105  
(314) 727-0101  
Attorneys for GMAC

Buyer (and Co-Buyer) Name and Address (Include County and Zip Code)  
**JEREMY JON WHITCOMB**  
**4150 REGENT AVE #7**  
**ROBINSDALE MN 55422 WENNEPIN**

Creditor (Seller Name and Address)  
**MILLER CHEVROLET, LLC.**  
**21160 JOHN HILLESS DRIVE**  
**ROGERS MN 55374**

You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. By signing this contract, you agree to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor the Amount Financed and Finance Charge according to the payment schedule shown below. The Finance Charge is figured on a daily basis at the Annual Percentage Rate on the unpaid balance of the Amount Financed. Description of Vehicle. You agree to buy and the Creditor agrees to sell the following vehicle:

New or Used	Year	Make and Model	Body Type	Vehicle Identification No.	Use for Which Purchased
USED	2000	CHEVROLET TRUCK	BLAZER	1GND13U5Y2293608	<input checked="" type="checkbox"/> personal <input type="checkbox"/> business

If truck- Describe body and major items of equipment sold:

**FEDERAL TRUTH-IN-LENDING DISCLOSURE**

<b>ANNUAL PERCENTAGE RATE</b> The cost of your credit as a yearly rate. <b>10.99 %</b>	<b>FINANCE CHARGE</b> The dollar amount the credit will cost you. <b>\$644.95</b>	<b>Amount Financed</b> The amount of credit provided to you or on your behalf. <b>18202.05</b>	<b>Total of Payments</b> The amount you will have paid after you have made all payments as scheduled. <b>23847.00</b>	<b>Total Sale Price</b> The total cost of your purchase on credit, including your down payment. <b>23847.00</b>
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Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due	Or as Follows:
60	397.45	Monthly beginning 03/07/2003	

Prepayment. If you pay off all your debt early you will not have to pay a penalty.  
 Security Interest. You are giving a security interest in the vehicle being purchased.  
 Additional Information. See the other side of this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, and security interest.

**ITEMIZATION OF AMOUNT FINANCED**

1 Cash Price (including any accessories, services, and taxes) \$ **14991.60** (1)

2 Total Downpayment: Net Trade-In \$ **N/A** Cash Downpayment \$ **N/A** (2)

3 Unpaid Balance of Cash Price (1 minus 2) \$ **14991.60** (3)

4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may be keeping part of these amounts):

A Cost of Required Physical Damage Insurance Paid to the Insurance Company Named Below - Covering Damage to the Vehicle	\$ <b>N/A</b>
B Cost of Optional Mechanical Repair Insurance Paid to the Insurance Company Named Below - Covering Engine/Mechanical Repairs	\$ <b>N/A</b>
C Cost of Optional Credit Insurance Paid to the Insurance Company or Companies Named Below: Life \$ <b>N/A</b> Disability, Accident and Health \$ <b>N/A</b>	\$ <b>N/A</b>
D Official Fees Paid to Government Agencies	\$ <b>974.99</b>
E Taxes Not Included in Cash Price <b>MINNESOTA SALES TAX</b>	\$ <b>21.00</b>
F Government License and/or Registration Fees (limits)	\$ <b>1755.395</b> <i>you</i>
G Government Certificate of Title Fee	\$ <b>25.00</b>
H Other Charges (Seller must identify who will receive payment and describe amount)	\$ <b>3210.45</b>
to <b>AUTOSARU ULTIMATE AMIS</b> for <b>SERVICE CONTRACT/GAP</b>	\$ <b>10202.05</b> (4)
to <b>MILLER CHEVROLET, LLC.</b> for <b>DOC FEE</b>	\$ <b>10202.05</b> (5)

5 Amount Financed - Unpaid Balance (3 + 4)

Insurance. If any insurance is checked below, the policies or policies issued by the Companies named will describe the terms and conditions.

Required Physical Damage Insurance. Physical damage insurance is required, but you may obtain it from anyone you want who is acceptable to the Creditor. The cost of this insurance is shown in 4A of the itemization above.

Optional Mechanical Repair Insurance. The cost of this insurance is shown in 4B of the itemization above.

Insurance Company **N/A**

Term: ☐ 36 months or 36,000 miles, whichever occurs first  
☐ 60 months or 60,000 miles, whichever occurs first

Coverage: ☐ \$25 Deductible ☐ \$50 Deductible ☐ \$100 Deductible

Optional Credit Insurance. Credit life insurance and credit disability insurance are not required to obtain credit and will not be provided unless you sign for them and agree to pay the additional cost. If you want this insurance, check the insurance desired and sign below. If you have chosen this insurance, the cost is shown in 4C of the itemization above. Credit life insurance pays only the amount you would owe if you paid all your payments on time. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment, unless a different term for the insurance is shown below.

Check the insurance desired: ☐ Life (Buyer ☐ Co-Buyer ☐ Both) ☐ Disability, Accident and Health (Buyer Only)

(Name of Insurer) **N/A** (Home Office Address)

Under policy of designated insurer, maximum amount of insurance under this contract is \$ **N/A**, and the total amount of insurance under this and any other insurance contract of the Buyer is limited to \$ **N/A**.

Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_ Co-Buyer Signature \_\_\_\_\_ Date \_\_\_\_\_

THE INSURANCE, IF ANY, REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS.

See the other side of this contract for other important agreements, including your agreement to give the Creditor a security interest in insurance premiums and prepaids.

**IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS**

You agree this contract and related documents (Do not date on Sunday)

Buyer Signs *[Signature]* Co-Buyer Signs *[Signature]*

Other owner signs here *[Signature]*

Creditor Signs **MILLER CHEVROLET, LLC.** *[Signature]*

If Seller obtained this vehicle from General Motors Corporation (GM) on installment credit terms, Seller assigns its interest in this contract to GM under the terms of the GM Installment Sales Finance Plan - Terms of Substitution and Assignment Agreement. Otherwise, Seller assigns its interest in this contract to General Motors Acceptance Corporation (GMAC) under the terms of the GMAC Retail Plan agreement.

Assigned with recourse \_\_\_\_\_ Assigned without recourse or with limited recourse \_\_\_\_\_

Seller \_\_\_\_\_ By \_\_\_\_\_ Title \_\_\_\_\_

*JCW*

Blumberg No. 5110 EXHIBIT A

GMAC  
MINNEAPOLIS, MN 55403  
03 JAN 30 AM 10:19

#### OTHER IMPORTANT AGREEMENTS

**Finance Charge.** The Finance Charge is figured on a daily basis at the Annual Percentage Rate on the unpaid balance of the Amount Financed. The Creditor will apply each payment first to the earned and unpaid part of the Finance Charge, and then to the unpaid balance of the Amount Financed.

**Late Payments and Early Payments.** The amounts shown on the front of this contract for the Finance Charge, Total of Payments and the Total Sale Price are based on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments and Total Sale Price will be more if you pay late and less if you pay early. If all your scheduled payments are equal, changes will take the form of more or fewer payments of the same amount, with a smaller final payment. If your final scheduled payment is larger than your earlier scheduled payments, changes will take the form of a larger or smaller final payment. The Creditor will send you a notice before the due date of the final scheduled payment. The notice will show the amount of the unpaid balance and the new payment schedule.

**Ownership and Risk of Loss.** You agree to pay the Creditor all you owe under this contract even if the vehicle is damaged, destroyed or missing. You agree not to remove the vehicle from the United States or Canada, or to sell, rent, lease or otherwise transfer any interest in the vehicle or this contract without the Creditor's written permission. You agree not to assign the vehicle to anyone, or to allow anyone to use the vehicle for any purpose, even if the vehicle was not the subject of judicial or administrative action. You will make sure the Creditor's security interest (lien) on the vehicle is shown on the title. If the Creditor pays any repair bills, storage bills, taxes, fines, or other charges on the vehicle, you agree to repay the amount when the Creditor asks for it.

**Security Interest.** You give the Creditor a security interest in (1) the vehicle being purchased, (2) any accessories, equipment and replacement parts installed in the vehicle, (3) any insurance premiums and charges for service contracts returned to the Creditor, (4) any proceeds of insurance policies or service contracts on the vehicle, and (5) any proceeds of insurance policies on your life or health that are financed in this contract. This security interest covers all amounts you owe in this contract, and in any transfer, renewal, extension or assignment of this contract. It also secures your other agreements in this contract.

**Prepayment.** You may prepay the unpaid balance of the Amount Financed in full or in part at any time without penalty. You do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of payment.

**Required Physical Damage Insurance.** You agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. At any time during the term of this contract, if you do not have physical damage insurance which covers both the interest of you and the Creditor in the vehicle, then the Creditor may buy it for you. If the Creditor does not buy physical damage insurance which covers both interests in the vehicle, it may, if it decides, buy insurance which covers only the Creditor's interest.

The Creditor is under no obligation to buy any insurance, but may do so if it desires. If the Creditor buys either of these coverages, it will let you know what type it is and the charge you must pay. The charge will be the premium for the insurance and a finance charge at the Annual Percentage Rate shown on the front of this contract. You agree to pay the charge in equal installments along with the payments shown on the payment schedule.

If the vehicle is lost or damaged, you agree that the Creditor can use any insurance settlement either to repair the vehicle or to apply to your debt.

**Optional Insurance or Service Contracts.** This contract may contain charges for optional insurance or service contracts. If the vehicle is repossessed, you agree that the Creditor may claim benefits under these contracts and terminate them to obtain refunds for unearned charges.

**Insurance or Service Contract Charges Returned to Creditor.** If any charge for required insurance is returned to the Creditor, it may be credited to your account or used to buy similar insurance or insurance which covers only the Creditor's interest in the vehicle. Any refund on optional insurance or service contracts obtained by the Creditor will be credited to your account. You will be notified of what is done.

**Required Repayment in Full Before the Scheduled Date.** If you fail to pay any payment when due, if a proceeding in bankruptcy, receivership or insolvency is started by you or against you or your property, or if you break any of the agreements in this contract (default), the Creditor can demand that you pay all you owe on this contract at once (not just past due payments). The amount you owe will be the unpaid balance of the Amount Financed plus the earned and unpaid part of the Finance Charge, and any amounts due because you did not keep contract promises.

**Repossession of the Vehicle for Failure to Pay.** Repossession means that, if you fail to pay according to the payment schedule or if you break any of the agreements in this contract (default), the Creditor can take the vehicle from you. To take the vehicle the Creditor can enter your property, or the property where it is stored, as long as it is done peacefully. If there is any personal property in the vehicle, such as clothing, the Creditor can store it for you. Any accessories, equipment or replacement parts will remain with the vehicle.

**Getting the Vehicle Back After Repossession.** If the Creditor repossesses the vehicle, you have the right to get it back (redeem) by paying the entire amount you owe on the contract (not just past due payments). The amount you owe will be the unpaid balance of the Amount Financed plus the earned and unpaid part of the Finance Charge, and all other amounts due, including the cost of taking and storing the vehicle and other expenses that the Seller or the Creditor has had. You must also cure any default in addition to repayment of what you owe. Your right to redeem will end when the vehicle is sold.

**Sale of the Repossessed Vehicle.** The Creditor will send you a written notice of sale at least 10 days before selling the vehicle. If you do not redeem the vehicle by the date on the notice, the Creditor can sell it. The Creditor will use the net proceeds of the sale to pay all or part of your debt.

The net proceeds of sale will be figured this way: Any charges for taking and storing the vehicle, cleaning and advertising etc., and any attorney fees and court costs will be subtracted from the selling price.

If you owe the Creditor less than the net proceeds of sale, the Creditor will pay you the difference, unless required to pay it to someone else. For example, if the Creditor may be required to pay a lender who has given you a loan and also taken a security interest in the vehicle.

If you owe more than the net proceeds of sale, you will pay the Creditor the difference between the net proceeds of sale and what you owe when the Creditor asks for it. If you do not pay this amount when asked, you may also be charged interest at the highest lawful rate until you do pay all you owe to the Creditor.

**Collection Costs.** If the Creditor hires an attorney to collect what you owe, you will pay the attorney's reasonable fee and any court costs. The attorney's fee will not exceed 15% of the amount that you owe.

**Delay in Enforcing Rights and Changes of this Contract.** The Creditor can delay or refrain from enforcing any of its rights under this contract without losing them. For example, the Creditor can extend the time for making some payments without extending others. Any change in terms of this contract must be in writing and signed by the Creditor. No oral changes are binding. If any part of this contract is not valid, all other parts will remain enforceable.

**Warranties Seller Disclaims.** You understand that the Seller is not offering any warranties and that there are no implied warranties of merchantability, of fitness for a particular purpose, or any other warranties, express or implied by the Seller, covering the vehicle unless the Seller extends a written warranty or service contract within 90 days from the date of this contract.

The foregoing disclaimer of implied warranties does not apply if this contract covers a new vehicle that was obtained primarily for personal use unless you were informed in writing prior to signing this contract that the vehicle was sold on an "as is" or "with all faults" basis and that you bear the entire risk as to the quality and performance of the vehicle.

An implied warranty of merchantability generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitness for a particular purpose is a warranty that may arise when the Seller has reason to know the particular purpose for which you require the vehicle and you rely on the Seller's skill or judgment to furnish a suitable vehicle.

This provision does not affect any warranties covering the vehicle which may be provided by the vehicle manufacturer.

**Used Car Buyers Guide.** The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

**Notice of Substitution of Contract.** If Seller obtained this vehicle from General Motors Corporation (GM) on installment credit terms, this contract will be substituted by Seller for and replace the Seller's obligation to pay GM for the vehicle you are purchasing. The substitution will not change the amount you have agreed to pay for the vehicle or the payment schedule, the finance charge or any of your rights and duties for this purchase. The terms of this contract not both your entire and only obligation to Seller, GM, or any other holder of this contract.

**NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS THEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

The preceding NOTICE applies only to goods or services obtained primarily for personal, family, or household use. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101  
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

WHITCOMB JEREMY JON  
4150 REGENT AVE #7  
ROBBINSDALE MN 55422

00	CHEV	4WBZR	60620R100
Year	Make	Model	Title NR.
1GNDT13W5Y2293688		01/23/03	NO
VIN		Security Date	Rebuilt

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

ETA529

1ST SECUR

LIEN

GMAC  
PO BOX 8122  
COCKEYSVILLE MD 2

Blumberg No. 5119

EXHIBIT

B

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Chapter 13

Jeremy Jon Whitcomb,

Bky. No. 04-45272-RJK

Debtor(s).

**Affidavit of J. Wood**

I, J. Wood, of General Motors Acceptance Corporation, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:

1. General Motors Acceptance Corporation has a security interest in the following (the "Collateral"):

U00 CHEVBLAZER VIN/HIN: 1GNDT13W5Y2293688.

2. \$15,218.89 is the outstanding balance under the contract as of September 20, 2004.
3. \$794.90 is the amount of the existing delinquency as of September 20, 2004.
4. \$12,621.67 is the replacement value of the Collateral.
5. Yes Appropriate insurance has been verified.

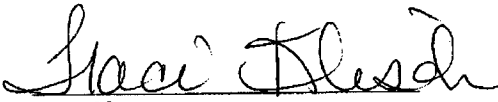
Further your affiant sayeth not.

Dated: 10/1/2004



J. Wood  
Bankruptcy Specialist  
General Motors Acceptance Corporation

Subscribed and sworn to before me on October  
1, 2004

  
Notary

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No.04-45272 RJK  
Chapter 13

Jeremy Jon Whitcomb,

Debtor.

***MEMORANDUM IN SUPPORT OF  
OBJECTION TO CONFIRMATION***

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GMAC submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

**FACTS**

GMAC holds a valid, perfected interest in a 2000 Chevrolet Blazer, VIN 1GNDDT13W5Y2293688 (the "Vehicle").

The balance due to GMAC as of the petition date totals \$15,218.89. The interest rate on the Contract is 10.99%. The fair market value of the Vehicle is \$12,621.67. Accordingly, the claim of GMAC should be treated as secured to the extent of \$12,621.67.

The Plan, however, provides for (i) GMAC's secured claim of \$15,000.00; (ii) total payment on GMAC's secured claim of \$8,500.00; and (iii) monthly payments of \$200.00 commencing in month 1 for 7 months and monthly payments of \$450.00 commencing in month 8 until paid.

**DISCUSSION**

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy GMAC's secured claim plus interest at the contract rate. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

CONCLUSION

For all of the reasons set forth herein, GMAC respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: October 6, 2004

RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn

Marilyn J. Washburn (#0324140)

7700 Bonhomme, 7th Floor

St. Louis, MO 63105

(314) 727-0101

Attorneys for GMAC

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Case No. 04-45272 RJK

Chapter 13

Jeremy Jon Whitcomb

Debtor.

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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Marilyn J. Washburn, an attorney licensed to practice law in this court, and employed by Riezman Berger, PC, with an office address of 7700 Bonhomme, 7th Floor, St. Louis, MO 63105, declares that on the date set forth below, I served the annexed **Objection to Confirmation** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Louis, Missouri addressed to each of them as follows:

United States Trustee  
300 South 4th Street, Suite 1015  
Minneapolis, MN 55415

(Attorney for Debtor)  
Malin D. Greenberg  
600 S. Hwy 169 Ste. 1525  
St. Louis Park, MN 55426

(Debtor)  
Jeremy Jon Whitcomb  
4150 Regent Ave. N. Apt. 7  
Robbinsdale, MN 55422

(Trustee)  
Jasmine Z. Keller  
12 South 6th Street, Suite 310  
Minneapolis, MN 55402

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And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: October 6, 2004

Signed: /e/ Marilyn J. Washburn

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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Case No. 04-45272 RJK

In re:

Chapter 13

Jeremy Jon Whitcomb,

Debtor.

***ORDER***

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This matter came before this Court for confirmation of the Chapter 13 plan of reorganization of Debtor. Appearances were noted in the record. Based upon all the files and records, the Court makes this Order pursuant to the Federal Rules of Bankruptcy Procedure.

IT IS HEREBY ORDERED, That confirmation of the Chapter 13 plan of Debtor is denied.

Dated: \_\_\_\_\_

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Robert J. Kressel  
United States Bankruptcy Judge